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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

NO. 74-598

EDUCATION/INSTRUCCION, INC., ET ALS
Petitioners

vs.

THOMAS MOORE, ET ALS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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EDUCATION/INSTRUCCION, INC., ET ALS
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v.

THOMAS MOORE, ET ALS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT:

To the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioners, Education/Instruccion, Inc., Benjamin Dixon, Julia Ramos and A. Boyd Hinds, Jr., pray that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Second Circuit affirming the judgment rendered on August 21, 1974 affirming (by a divided Court) the judgment of the Honorable T. Emmet Clarie, U.S. District Court for Connecticut.

I. OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit entered on August 21, 1974, is at this time unreported. It is set forth in Appendix A, pp. 1a *et seq.*

The opinion of the United States District Court for the District of Connecticut, entered on June 13, 1973, is also unreported and is attached as Appendix B.

II. JURISDICTION

This suit was originally commenced in the United States District Court with jurisdiction sought pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S. Code Sect. 2000d *et seq.* and Title VIII of the said Act, 42 U.S. Code Sect. 3601 *et seq.* as well as the Fifth and Fourteenth Amendments to the Constitution of the United States and Section 42 U.S.C. 1983. The District Court entered judgment dismissing the complaint (Appendix A). The decision of the District Court was appealed to the United States Court of Appeals for the Second Circuit, which, on August 21, 1974, entered a judgment affirming the order of the District Court (Appendix B). The jurisdiction of the Supreme Court is invoked under Rule 19 of the Supreme Court Rules and Title 28, United States Code, Section 1254 on the ground that review by the Supreme Court by a Writ of Certiorari is sought of a judgment of the affirmance on appeal by the United States Court of Appeals for the Second Circuit.

III. QUESTION PRESENTED

Does the one-man, one-vote rule apply to Regional Planning Agencies which exercise planning and other government functions under state law and which directly control the flow of federal funds into the metropolitan region under federal law?

IV. CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS

Constitutional Provisions: Fourteenth Amendment

Statutes: Conecticut General Statutes § 4-124.

Title 42, United States Code, § 3101 and § 3334; Title 28, United States Code, § 1254, Rule 19, Supreme Court Rules.

Regulations: HUD Regulation CPM 6041.1A, HUD Circulars MPD 6415.1A, 6415A, 6415.2A and 6415.3.

V. STATEMENT OF THE CASE

Petitioners, a charitable, non-profit corporation, and named individuals representing minority citizens of Hartford, brought suit against the Capitol Region Planning Agency and Capitol Region Council of Governments, in the United States District Court for the District of Connecticut at Hartford, Connecticut. The action involved two counts, the first alleging that the Capitol Region Planning Agency (CRPA) consistently failed to comply with federal statutes and regulations which mandate low income and minority representation in the original planning process. After investigation by the Department of Housing and Urban Development (HUD), the plaintiffs' allegations were determined to be valid with regard to citizen participation and lack of equal opportunity employment, resulting in the rescission of federal certification of CRPA as the Area Planning Office (APO), and the withdrawal of federal funding for that agency. Consequently, Clarie, J., never considered Count I since the issue was moot.

The Second count alleged that the consolidation of CRPA and the Capitol Region Council of Governments (CRCOG) would violate the plaintiffs' rights under the Fourteenth Amendment to the Constitution of the United States in that their votes on the resulting organization would be unconstitutionally diluted when they elected their representatives to said organization. Pursuant to Conn. Gen. Statute § 4-124(c) (1971 Public Act 821) and the terms of the merger between CRPA and CRCOG, the City of Hartford, while containing over 24 percent of the region's population, sends only four representatives to the thirty-two member council, approximately 12 percent representation. (The statute provided Hartford with only one representative on the new COG but the representation was increased to four delegates as a result of merger negotiations). This dilution of representation of the City of Hartford also results in the under-representation of minority residents because approx-

imately 85 percent of the minority population in the region resides in Hartford.

The District Court (Clarie, J. presiding) dismissed the action (Appendix A). The Court of Appeals for the Second Circuit affirmed (Appendix B).

While this action was pending before Judge Clarie in the District Court, the United States Supreme Court decided the cases of *Salyer Land Co.* v. *Tulare Water District*, 410 U.S. 719, 93 S. Ct. 1224, 35 L. Ed. 2d 659 (1973) and *Associated Enterprises, Inc.* v. *Toltec Watershed Improvement District*, 410 U.S. 743, 93 S. Ct. 1237, 35 L. Ed. 2d 675 (1973). The issue presented here is whether, in light of the Supreme Court decisions in *Salyer* and *Toltec*, Judge Clarie and the Second Circuit correctly held that the proposed regional council of governments is not subject to the one-man one-vote requirement.

VI. ARGUMENT

A. The Equal Protection Clause of The United States Constitution requires that representation on the proposed COG be adjusted for population differential between the member towns

In a series of cases, the United States Supreme Court has held that the United States Constitution requires that "as nearly as is practicable one man's vote . . . is to be worth as much as another's." *Wesberry* v. *Sanders*, 376 U.S. 1, 8, 84 S. Ct. 526, 11 L. Ed. 2d 481 (1964); *Reynolds* v. *Sims*, 377 U.S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964).

In *Avery* v. *Midland County*, 390 U.S. 474, 88 S. Ct. 114, 20 L. Ed. 2d 45 (1968), the Supreme Court applied this "one-man, one-vote" principle to the election of County Commissioners and held that a qualified voter in a local election has a Constitutional right to have his vote counted with substantially the same weight as that of any other

vote, where the elected official exercises "general governmental powers over the entire geographic area served by the body." 390 U.S. at 487-8.

B. A substantial Federal question is presented, to wit, whether "one-man, one-vote" applies to regional agencies which control the flow of substantially all Federal funds to municipalities?

The CRPA-CRCOG merger presents the question of whether the "one-man one-vote" principle applies to a regional agency statutorily composed of one elected official from each participating member. If the doctrine applies, the structure of the new Council of Governments (COG) is unconstitutional.

The series of cases establishing and applying the one-man one-vote principle has been complicated by the recent U.S. Supreme Court cases of *Salyer* v. *Tulare Water District*, *supra*, and *Associated Enterprises, Inc.* v. *Toltec Watershed Improvement District*, *supra*. The extent to which these cases limit the application of *Reynolds* v. *Sims*, *supra*, and *Avery* v. *Midland County*, *supra*, and other cases is as yet unclear. The lower court decisions in the present case demonstrate that uncertainty and the need for further clarification by the Supreme Court.

In *Salyer*, the court held that California statutes permitting only landowners to vote in "water storage district" elections and apportioning votes according to the assessed valuation of the land within the districts, did not violate equal protection. The court was considering an exception to the application of the one-man, one-vote rule. In *Avery*, the court had reserved decision on that exception:

> Were the (governmental unit) a special purpose unit of government assigned the performance of functions affecting definable groups of constituents, we would have to confront the question whether such bodies may

> be apportioned in ways which give greater influence to the citizens most affected by the organization's functions. 390 U.S. *supra* at 483-484.

In analyzing various types of government units, the court seemed to divide them into three types. The first are those units exercising general governmental powers as defined in *Avery* v. *Midland County, supra.* These must follow the rule of *Reynolds* v. *Sims.* The second group of governmental units exercises more limited powers, but powers which have sufficient impact throughout the district to justify the application of the *Avery* princip'. Cited examples are *Bianchi* v. *Griffing,* 393 F.2d 457 (2d Cir. 1968) and *Hadley* v. *Junior College District,* 397 U.S. 50, 90 S. Ct. 791, 25 L. Ed. 2d 45 (1970).

The third group, which is excepted from application of the *Reynolds* one-man, one-vote rule, represents those governmental units whose duties are so far removed from normal governmental activities and whose actions so disproportionately affect select groups that a popular election in compliance with *Reynolds* might not be required. The court in *Salyer* then concluded:

> "(T)he appellee water storage district, by reason of its *special limited purpose* and of the disproportionate effect of its activities on landowners as a group is the sort of exception to the rule laid down in *Reynolds* which the quoted language from *Hadley, supra,* and the decision in *Avery, supra,* contemplated. *Salyer* v. *Tulare,* 35 L. Ed. 2d at 666." (emphasis added).

The Supreme Court found that a water storage district was a governmental . nit with a very specific purpose, that is performed specific functions which were not "normal governmental" functions, that its effect was solely upon landowners, and that the activities and projects were financed by landowners in proportion to the benefit received by those landowners, which benefit was directly proportional to the acreage owned by the landowners.

The issue presented in the instant petition is whether Regional Councils of Government, which serve as the conduit of all Federal Funds, fall into the general requirement of *Avery* or the exception of *Salyer* and *Toltec*.

C. The Council of Governments is a substantial and significant Governmental Unit

Clearly, the proposed COG performs important governmental functions with region-wide impact. One of the major duties of the agency is to create an area-wide plan which directs the growth of the region. This plan provides for the placement within the region of the following major governmental capital development projects: low income housing, highways and secondary roads, mass transportation, water and sewer systems, parks and environmental planning. Once the plan is developed, the granting of federal funds within the region depends on the proposal's consistency with the regional plan.

For examples, proposals for federal funding of local programs under Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C.A. 3334), Title IV of the Intergovernmental Cooperation Act of 1968 and Section 102(2)(c) of the National Environment Policy Act of 1969 must be submitted to the regional planning agency (in this case the COG) for comment. Further, the United States Department of Housing and Urban Development has conditioned the granting of certain HUD funds upon the existence of such an organization. HUD Circulars MPD 6415A, 6415.2A, 6415.3. The designation of only the highest elected official of the component governments as delegates to the agency further emphasizes the significance attributed to the activities of the proposed COG.

Most regional planning agencies are designated "Area Planning Offices" under the interlocking federal regulations implementing the Federal Housing Act of 1964, the Housing

and Urban Development Act of 1965 and the Intergovernmental Cooperation Act of 1968. Such a designation as APO makes the agency a powerful regulatory body in the intricate federal system.

For example, HUD regulation CPM 6041.1A, issued under authority of Section 701 of the Housing Act of 1964, provides that federal funds be paid to a regional organization for study and planning development of the region. The regulations establishing the powers and duties of the APO emphasize the essential governmental scope of the agency. As one example, the APO is not only given the authority to establish housing goals for the entire region, but also the power to prepare zoning and subdivision legislation.

Since the requirements and goals established by the APO determine the priority and granting of federal funding, the goals and guidelines in effect determine the pattern of growth for the region. If, for example, the APO is dominated by the white, middle class suburbs, the patterns of past discrimination for local minorities and the unrepresented urban center will most likely be perpetuated through housing and planning grants affecting the region.

Regulations MPD 6415.1A, MPD 6415.2A and MPD 6415.3, issued under the Housing and Urban Development Act of 1965 (42 U.S.C.A. 3101) encompass the APO system as part of the implementation process of HUD capital grants and loan programs. Among the many duties conferred by these regulations are the authority to receive and expend federal funds and the power to determine whether an area has sufficient planning to permit applications filed by local governmental units to be considered by HUD. An agency is exercising obvious governmental functions when it is empowered to prohibit the federal government from even considering an application for funding from a municipality.

Designation as an APO also enhances the power of the proposed COG through its inclusion in the A-95 system. The Office of Management of the Budget has designated the APOs as clearing houses for federal funds and the A-95 rule sets forth duties and responsibilities under Title IV of the Intergovernmental Cooperation Act of 1968 and section 102(2)(c) of the National Environment Policy Act of 1969. Essentially A-95 provides for the coordination of federal projects with state programs. These significant federal programs require that the state plan be acceptable to the APO as a precondition of assistance under a wide catalog of federal assistance programs.

A final facet of the COG's governmental powers is the agency's direct administration of federal funds throughout the region. The present COG administers over a quarter of a millon dollars in emergency employment funds and over $400,000 in federal law enforcement funds under the LEAA program established by the Omnibus Crime Control Act.

The Council of Governments exercises an important planning function as authorized by state statutes. But far more important is the role of the COG in the system of federal funding. The COG must review and make recommendations concerning the application by local governments for federal funding of most capital projects. Of primary consideration is always whether the proposal would be compatible with existing regional planning. The COG's further authority as an APO and under the A-95 system emphasizes the significant impact which the agency has on community development through allocation of federal funds. Given the additional impact of revenue sharing on the importance of federal funding and the fact that federal grants may pay up to 80 percent of the cost of a local facility, it must be recognized that an agency which directly controls the flow of federal funds into a region must be said to be exercising important governmental functions.

D. This Petition also raises questions of whether Salyer-Toltec overruled Hadley v. Junior College District

This petition also raises the issue whether *Salyer* and *Toltec* overrule *Bianchi* v. *Griffing, supra*, and *Hadley* v. *Junior College District*. In *Hadley*, the Supreme Court held that the one-man, one-vote principle applied to the election of trustees to a Junior College District and the Court invalidated the existing apportionment system because it inadequately adjusted for population differentials. The Court rejected a proposed distinction between administrative and legislative officers and concluded that whenever persons are to be selected by popular election to perform governmental functions, the one-man, one-vote principle should be applied to the election scheme. Therefore, in order to determine whether the one-man, one-vote cases are applicable to a given situation, one must determine not only whether the agency performs governmental functions, but also whether the members of the agency are elected.

As explained above, the proposed regional Council of Governments would be statutorily composed of the chief elected official of each member town. Thus, though there is no single election at which representatives to the Council are selected, the membership of the Council is clearly determined by local elections rather than appointment. In reality, when voters in a member town elect the chief elected official of the locality, they will also elect the locality's representative to the new Council of Governments, and the agency should, therefore, be considered an elected body.

Indeed, this was the conclusion reached by the Federal Court of Appeals for the Second Circuit in *Bianchi* v. *Griffing, supra*. In this case a challenge was brought to the apportionment of representatives to the Suffolk County Board of Supervisors. The County Board of Supervisors was composed of the Town Supervisor from each of the five towns in the county. The Town Supervisors were elected

by popular vote in their respective towns and each was entitled to a single nonweighted ballot as a member of the Board of Supervisors.

The Court rejected the argument that the Town Supervisors were merely delegates from their respective towns and not elected officials. Instead, the Court recognized that a voting citizen was electing both his Town Supervisor and a member of the Board of Supervisors. The Court then remanded the case to the District Court to supervise the adoption of a reapportionment plan.

Hadley and *Bianchi*, taken together, establish that the one-man, one-vote principle is to be applied whenever persons are to be selected by popular election to perform general governmental functions and that the method of selection in the present case does in fact constitute popular election. The question now arises, to what extent do *Salyer* and *Toltec* overrule *Hadley* and *Bianchi?*

Although the instant case seems clearly within the purview of *Hadley* and *Bianchi*, the District Court and the Court of Appeals dismissed the complaint, relying at least in part on *Salyer* and *Toltec*, yet never discussing the question of whether *Salyer* and *Toltec* overrule *Hadley* and *Bianchi* or merely create some exception to it. If decisions in the apportionment area are to demonstrate any consistency at all, this question must be resolved.

It is our contention that the representatives to the proposed COG will be chosen in a manner identical to the manner of delegates to the Board of Supervisors in *Bianchi*. Both the U.S. Supreme Court and the Second Circuit have indicated that in the context of the reapportionment cases, representatives selected in this manner should be regarded as elected representatives, and thus, according to *Hadley* v. *Junior College District*, *supra*, the one-man, one-vote principle should apply. In order to satisfy the

strictures of Equal Protection, each representative must represent at least approximately the same number of people. The present structure of the new COG allows no adjustment for population differential; there is an automatic discrimination against large towns; representatives will not represent even approximately the same number of people; and the structure is, therefore, unconstitutional in that it violates plaintiffs' rights to equal protection of the law.

Respectfully submitted,
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

NO. .....

EDUCATION/INSTRUCCION, INC., ET ALS
Petitioners

vs.

THOMAS MOORE, ET ALS

APPENDIX

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 520—September Term, 1973.

(Argued March 5, 1974 Decided August 21, 1974.)

Docket No. 73-2507

EDUCATION/INSTRUCCION, INC., BENJAMIN DIXON, JULIA M. RAMOS and A. BOYD HINDS, JR.,

Plaintiffs-Appellants,

v.

THOMAS MOORE, INDIVIDUALLY AND AS CHAIRMAN OF CAPITOL REGIONAL PLANNING AGENCY, ET AL.,

Defendants-Appellees.

Before:

LUMBARD, OAKES and TIMBERS,

Circuit Judges.

Appeal from order entered in the District of Connecticut, T. Emmet Clarie, *District Judge*, dismissing complaint that alleged that Connecticut statute that authorizes regional councils of government denies plaintiffs the equal protection of the laws because such council in the Hartford area is not apportioned on a one man, one vote basis.

Affirmed.

IGOR I. SIKORSKY, JR., Hartford, Conn., *for Plaintiffs-Appellants.*

RALPH G. ELLIOT, Hartford, Conn. (Alcorn, Bakewell & Smith, Hartford, Conn., on the brief), *for Defendants-Appellees.*

PER CURIAM:

On this appeal from an order entered in the District of Connecticut, T. Emmet Clarie, *District Judge,* dismissing a complaint in a civil rights action which sought declaratory and injunctive relief, the sole issue is whether Public Act 521 enacted by the Connecticut General Assembly in 1971, Conn. Gen. Stat. §§ 4-124i through 4-124p (Supp. 1972), which authorizes regional councils of government, denies plaintiffs the equal protection of the laws because such council in the Hartford area is not apportioned on a one man, one vote basis. The district court held that there was no denial of equal protection and dismissed the complaint. We affirm.

Plaintiffs are a non-profit Connecticut corporation organized for educational, charitable and cultural purposes, together with three individual citizens of Connecticut, two of whom reside in the City of Hartford and one in the Town of Windsor. Defendants are the Chairman of the Capitol Regional Planning Agency (CRPA), the Chairman of the Capitol Region Council of Governments (CRCOG), the Secretary of the United States Department of Housing and Urban Development (HUD), the Regional Director of that Department and twenty-nine individuals who are the chief elected officials of the twenty-nine towns which comprise the Capitol Region (i.e. the Hartford area).

In view of the district court's adequate statement of the facts and the controlling law, —— F.Supp. ——, it is sufficient for our purpose merely to state the claims asserted and the district court's rulings thereon with which we agree.

Plaintiffs challenge on equal protection grounds Public Act 821 which provides for the restructuring of the existing CRPA and CRCOG to create a new regional council of government if approved by at least 60% of the towns within the planning region — here, the Hartford area. Each member town of the new council is entitled to one representative on the council, such representative to be the chief elected official of that town.

The gravamen of plaintiffs' claim is that the Act's restructuring of the present regional bodies to create a new regional council in the Hartford area will result in underrepresentation of the City of Hartford on the new council. In the past Hartford has had 5 representatives on CRPA, or 8% of that body's membership. On the new council Hartford will have four representatives. A 1973 amendment gave Hartford four representatives on the council instead of the one initially provided,[1] the three additional council members to be appointed by Hartford's city council. Special Act No. 73-79 (effective May 14, 1973). Hartford has a population of approximately 160,000, or about 24% of the regional population. Thus, plaintiffs argue, Hartford's vote will be greatly diluted, as compared for example with the Town of Andover, whose population is approximately 2,000, which will have one vote. Plaintiffs' claim in essence is that the legislature's failure to apportion the new regional council on a one man, one vote basis denies them the equal protection of the laws in violation of the Fourteenth Amendment.

Application of the one man, one vote principle of *Reynolds* v. *Sims*, 377 U.S. 533 (1964),[2] to various units of

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1 The statement in the District Court opinion that Hartford would have one representative on the new council referred to the provision in the Act prior to the 1973 amendment.

2 *Reynolds* v. *Sims* implemented the Supreme Court's earlier holding in *Baker* v. *Carr*, 369 U.S. 186 (1962), that an assertion of constitutional

government in the State of Connecticut is no stranger to the Connecticut district court. E.g. *Butterworth* v. *Dempsey*, 229 F.Supp. 754 (D. Conn. 1964) (state legislature), *aff'd sub nom. Pinney* v. *Butterworth*, 378 U.S. 564 (1964), *on remand*, 237 F.Supp. 302 (D. Conn. 1964 and 1965); *Kogut* v. *Jepson*, 271 F.Supp. 74 (D. Conn. 1967) (city board of aldermen); *Giordano* v. *Amity Regional High School District #5*, 313 F.Supp. 403 (D. Conn. 1970) (regional board of education).

The critical question raised by defendants' motion to dismiss the complaint for failure to state a claim upon which relief can be granted, Fed. R. Civ. P. 12(b)(6), is whether the proposed regional council of government for the Hartford area is subject to the one man, one vote requirement. The district court held that it is not. We agree.

The statute in question does not provide for elective bodies.[3] The councils do not exercise general governmental powers, nor do they perform governmental functions, within the meaning of *Hadley* v. *Junior College District*, 397 U.S. 50 (1970), and *Avery* v. *Midland County*, 390 U.S. 474 (1968). Indeed, the councils do not have even the minimal governmental powers found insufficient to invoke the one man, one vote principle in the Supreme Court's

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right, as impaired by malapportionment according to population of representatives in state legislatures, presented a justiciable issue to be determined by the federal courts.

3 The district court did not find it necessary to determine whether members of the council are elected or appointed, since the council clearly does not exercise general governmental powers nor does it perform governmental functions.

We do note, however, that at least some members of the council do not automatically become council members by virtue of their election to office in their respective towns. The three additional members from Hartford, referred to above, are appointed by the city council under Special Act 73-79. And at least the members from West Hartford, Wethersfield and Glastonbury are selected by the respective town councils after the voters elect the councils themselves.

most recent decisions in *Salyer Land Co.* v. *Tulare Water District*, 410 U.S. 719, 728 n. 7, 729 (1973), and *Associated Enterprises, Inc.* v. *Toltec District*, 410 U.S. 743 (1973).

The powers and functions of the councils are essentially to acquire information, to advise, to comment and to propose.[4] As Judge Clarie aptly put it:

> "To the extent that the [council] is able to provide a forum for an interchange of ideas and an atmosphere conducive to the development of solutions to regional problems which know no geographic boundaries, its importance should not be minimized. But this does not bar recognition of the fact that it would be essentially advisory and non-governmental in both purpose and function, and the type of body which need not be apportioned on a strict numerical basis. As such, the [council] represents the kind of flexible experimentation which the Supreme Court has consistently recognized as being both desirable and constitutionally permissible."

We agree.

We affirm on the well reasoned opinion of Judge Clarie below. —— F.Supp. —— (D. Conn. 1973).[5]

Affirmed.

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4 We agree with the district court's conclusion that there was no issue before that court on the present record as to whether federal statutes or regulations of HUD require fair representation of minority groups on policy making bodies which control or significantly affect the disposition of federal funds. The councils are not conduits of federal funds, but only of information. Since federal certification of the councils here involved has been terminated, regulatory compliance was not an issue before the district court and it is not an issue before us.

5 We note that our dissenting colleague addresses himself primarily to the question of whether a three-judge court should have been convened below. Arguing that such a court should have been convened, the dissent relies heavily upon our recent decision in *Rosenthal* v. *Board of Education*, —— F.2d —— (2 Cir. 1974), slip op. 3603 (May 29, 1974).

(Footnote continued on next page)

OAKES, *Circuit Judge* (dissenting):

I respectfully dissent.

It seems to me that this is another reapportionment case just like *Rosenthal v. Board of Education*, No. 73-2729 (2d Cir. May 20, 1974), slip op. 3603. There, following *Goosby v. Osser*, 409 U.S. 512, 518 (1970), and *Hagans v. Lavine*, —— U.S. ——, 42 U.S.L.W. 4381 (Mar. 25, 1974), we held that the constitutional claims made were not "'so attenuated and unsubstantial as to be absolutely devoid of merit' *Newburyport Water Co. v. Newburyport*, 193 U.S. 561, 579 (1904), or 'no longer open to discussion,' *Magilvra v. Ross*, 215 U.S. 70, 80 (1909)." Slip op. at 3610. In the present case as well injunctive relief is sought. The Connecticut statutes that are involved are of state-wide applicability. For example, Conn. Gen. Stat. Ann. § 4-124c (Supp. for 1974), a provision attacked by appellants, prescribes the formation and composition of all regional councils of elected officials "[w]ithin any planning region of the state . . . ." Sections 4-124i-124p, the principal provisions appellants challenge, relate to the formation and composition of regional councils of governments established "[w]ithin any planning region of the state . . . ."

(Footnote continued)

The dissent's reliance on *Rosenthal*, in our view, is misplaced. In *Rosenthal*, there was no question that the body in question performed substantial governmental functions ("There seems no doubt, as recognized by the district court, that the powers of a central high school district include substantial governmental functions." —— F.2d at ——, slip op. at 3607). Here the proposed regional councils do not have general governmental powers and do not perform governmental functions.

It is axiomatic that a single judge may dismiss a complaint which attacks the constitutionality of a state statute and seeks an injunction against its enforcement if he finds that the complaint presents no substantial constitutional issue. E.g., *Goosby v. Osser*, 409 U.S. 512 (1973). Here the recent decisions of the Supreme Court in *Sayler and Associated Enterprises* "inescapably render the [plaintiffs'] claims frivolous." 409 U.S. at 518. The district court, therefore, properly dismissed plaintiffs' complaint without convening a three-judge court.

The sections relating to regional planning agencies, also under attack here, likewise are state-wide in applicability, again relating to "any planning region of the state . . . ." *E.g.*, Conn. Gen. Stat. Ann. § 8-31a (Supp. for 1974).

Since the question, for three-judge court purposes, is whether a substantial constitutional issue is presented, *Rosenthal* v. *Board of Education, supra*, a discussion of the merits of the plaintiff-appellant's claim is necessary.

On the crucial question whether the new Council of Governments established in the Hartford area (COG) pursuant to the above state provisions exercises general governmental powers within the ambit of *Avery* v. *Midland County*, 390 U.S. 474 (1968), and *Hadley* v. *Junior College District*, 397 U.S. 50 (1970), it seems to me that neither the COG nor its predecessor bodies, the Capitol Region Planning Agency (CRPA) and Capitol Region Council of Governments (CRCOG),[1] can be considered solely in the light of the statutory authority delegated by the State of Connecticut, as the majority considers them. Rather, we must look to the overall role of the agency in question in the federal system as a whole. A regional planning body such as COG, though a creature of state law, is established with a view to its functions under federal law and the federal system.[2] A regional planning agency cannot be looked at while wearing state-oriented blinders when one of its principal purposes is to play a substantial role in the decision-making process involved in the dispensation of federal funds affecting all the citizens of the affected area.

1 The COG was the result of the legislative consolidation under Conn. 1971 Public Act No. 821, Conn. Gen. Stat. Ann. §§ 4-124i-124p, of the then existing CRPA and CRCOG, and its composition is principally the object of attack in this suit.

2 It is not mere coincidence that COG was created meeting the federal requirements for planning agencies which are to serve as Area Planning Offices and thereby qualify for large federal planning grants.

The test of performing governmental powers must be one based on economic reality, not the mechanical application of nineteenth century municipal law. For example, 42 U.S.C. § 3334 requires that any application for a federal loan or grant for the planning or construction of hospitals, libraries, sewers, water and sewage treatment facilities, highways, mass transit, airports or other transportation facilities, recreation, or open-space development must be submitted for review to an areawide agency, which in this case would be COG. COG may then comment and make its recommendations whether the application should be granted or not. 42 U.S.C. § 3334(b)(1). Primary emphasis is given to whether the project would be consistent with comprehensive planning and whether the project contributes to the fulfillment of such planning. *Id.* Supplementary grants, amounting to as much as any original grant, can be made, but only when there is a showing that the project will be "carried out in accord with areawide comprehensive planning and programming." 42 U.S.C. § 3335(b)(3), (c)(1). In making the determination whether a project is in accord with an areawide plan, "the Secretary shall obtain, and give full consideration to, the comments of [the areawide planning bodies]." 42 U.S.C. § 3335(d). In other words, federal law provides a carrot and stick approach to insure that local governments comply with the area plan. Thus, while COG may have no regulatory power under state law to affect local governments, being limited to planning functions, in light of the federal statutes COG's plans themselves can affect local government's abilities to receive federal funds and COG's comments on localities' applications may be altogether determinative.

Not only does the Connecticut COG have an ability to affect the approval of individual municipalities' applica-

tions for grants by the exercise of its planning function, but also the local municipalities are dependent upon the COG for establishment of a proper plan in the first instance. Thus, if COG does not do its job—failing to create an areawide plan or creating an areawide plan which does not meet federal requirements—even a non-member municipality's application for a grant for water and sewer facilities or an open space land program may be disapproved for failure to be part of a proper areawide plan. *See* 42 U.S.C. § 1500b, 3102(c); Appendix 4, Comprehensive Planning Assistance Requirements and Guidelines for a Grant, CPM 6041.1A, U.S. Dept. of Housing and Urban Development (1972).

This control of the purse strings for the building of such a large assortment of facilities is essentially "governmental" in nature in a day and age when municipalities are frequently financially incapable of total self-reliance. In *Hadley, supra,* the power to tax and spend was an important governmental power had by the district; in the year 1974 having a principal hand on the faucet of federal grants must be treated as at least as important as the local power to tax, especially where federal grants may pay up to 80 per cent of facilities' costs, especially since in so many cases the munipicalities' powers to tax are often being exercised to their outer limits.

Beyond this, the COG has important powers under, *e.g.,* the Intergovernmental Cooperation Act, 42 U.S.C. § 4201 *et seq.*, and NEPA, 42 U.S.C. §4321 *et seq.* In this instance it also happens to operate a regional crime squad (with the help of LEAA money), engages in joint purchasing efforts, and otherwise performs important functions that may properly be characterized as governmental in nature.

I am fully cognizant that the water district cases, *Salyer Land Co.* v. *Tulare Lake Basin Water Storage District,*

411 U.S. 719 (1973), and *Associated Enterprises* v. *Toltec Watershed Improvement District*, 410 U.S. 743 (1973), indicate to many that the Supreme Court is backing away from *Reynolds* v. *Sims*, 377 U.S. 533 (1964), and its progeny. I think these cases can be read, however, as dealing only with special purpose districts; even though the water districts in *Salyer* and *Toltec* had broad governmental powers, they were for a limited or special purpose only, relative to the cost and use of water. *See* 58 Cornell L. Rev. 687 (1974). Here, while the COG does not have the direct power to tax, its ability to influence or determine the amount, type, and location of virtually every public service is "governmental" power in its truest sense.

None of this, of course, is to say that there must be the same precision in formulating a proper system of apportionment of representation on a regional planning agency as in a state legislature, just as state legislative reapportionment is not subject to the same strict standards as congressional reapportionment. *E.g.*, *White* v. *Regester*, 412 U.S. 755, 763 (1973). Nor is it to fail to recognize the point underlying Mr. Justice Harlan's dissent in *Avery*, 390 U.S. at 491-98, that in a given case a regional planning agency may be of more concern to the rural members thereof than to the urban residents involved.[3] These are considerations which could be taken into account, however, in establishing a formula which more equally protects or represents the people of Hartford than the one ultimately adopted, under the threat of this very suit, by the Connecticut Assembly by special act.[4]

[3] There is no indication of any sort that this is the case here.

[4] In the case of Hartford (on behalf of the citizens of which the plaintiff-appellants instituted this suit), with a population of approximately 160,000 or 24 per cent of the "Capitol Region," it had five representatives of the 60 on the old CRPA. Before this suit was brought

Under the majority decision today, regional planning agencies for metropolitan areas may be weighted in representational makeup one-sidedly against the urban area in favor of the outlying suburbs and towns, and thus the central cities of states with a state legislature dominated by rural or suburban towns left behind the door when facilities or services requiring federal funding are established.

While the district court did not reach the question and the majority mentions it only in passing, a subsidiary question is whether, since there is no direct election of the members of the new COG as such, this case falls within the rule of *Sailors* v. *Board of Education*, 387 U.S. 105 (1967), that makes the one-man one-vote doctrine of *Reynolds* v. *Sims*, *supra*, inapplicable to non-elected officials. The Connecticut statutes, however, make it very clear that COG will be basically composed of the "chief elected official" from each member town or city. Conn. Gen. Stat. Ann. § 4-124k.[5] The "chief elected official" means "the highest ranking elected governmental official of any town, city or borough," and the term "elected official" means "any selectman, mayor, alderman or member of a

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the Hartford representation on the new COG would have been one of 29, just the same as Andover's (population 2,000). Thereafter the Connecticut legislature passed Special Act No. 73-79 (eff. May 14, 1973) providing Hartford with three additional representatives to COG who are appointed.

5 There is an exception where a town has no *"chief* elected official," in which case the representative to COG is chosen from the elected officials by the legislative body of the town. Conn. Gen. Stat. Ann. § 4-124k (Supp. for 1974). Here, however, only three of the 29 towns comprising the so-called Capitol Region have no "chief elected official." Despite this exception and that specially made in the case of Hartford, the COG is in substantial part elective in nature and composed of elected members. *See Bianchi* v. *Griffing*, 393 F.2d 457 (2d Cir. 1968). *See also Lodico* v. *Board of Supervisors*, 256 F. Supp. 440 (S.D.N.Y. 1966) (reapportionment of County Board of Supervisors ordered where members of Board became such upon election to post of Supervisor by individual towns), approved on this point by *Abate* v. *Mundt*, 403 U.S. 182, 183, 187 (1971).

common council or other similar legislative body . . . or warden of burgess . . . ." Conn. Gen. Stat. Ann. § 4-124i (Supp. for 1974). While the case is one not precisely controlled by precedent in this respect, it seems closest to *Bianchi* v. *Griggs*, 395 F.2d 457 (2d Cir. 1968), where persons elected as town supervisors automatically became members of the county board of supervisors. Here as there the fact is that these officials are *elected*, they are not appointed, and the one office (that of "chief elected official") carries with it automatic membership on the regional council.

From all this it seems clear to me that there is a sufficiently substantial question of constitutionality as to require the convening of a three-judge court, *see Rosenthal* v. *Board of Education*, *supra*, a question neither considered nor decided by the majority or the district court below.

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CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

EDUCATION/INSTRUCCION, et al :
:
-vs- : Civil No. 15,085
:
THOMAS MOORE, et al :

RULING ON MOTIONS TO DISMISS

The plaintiffs in this civil rights action are Education/Instruccion, Inc., a non-profit corporation organized under the laws of the State of Connecticut for educational, charitable, and cultural purposes, and three named individuals, Benjamin Dixon, Julia Ramos, and A. Boyd Hinds, Jr., each of whom is a citizen of the United States and the State of Connecticut.[1]

The defendants are Thomas Moore, Chairman of the Capitol Regional Planning Agency, a planning agency organized pursuant to Conn. Gen. Stat. § 8-31a[2] to serve the "Capitol Region;"[3] Richard Blackstone, Chairman of the Capitol Region Council of Governments, a regional agency organized pursuant to Conn. Gen. Stat. §4-124c[4] and consisting of the chief elected officials of each of the towns in the Capitol Region, except the towns of Newington, Somers, Hebron, and Windsor, which have chosen not to be members; George Romney, Secretary of the United States Department of Housing and Urban Development at the commencement of this action, and Lawrence Thompson, the regional director of that Department. Also

named as parties defendant are twenty-nine individuals who are sued individually and in their official capacity as the "chief elected official" of each of the twenty-nine towns which comprise the "Capitol Region."[5]

Jurisdiction is invoked pursuant to the Civil Rights Act of 1964 and 1968, 42 U.S.C. § 2000d, et seq., and 42 U.S.C. § 3601, et seq., 42 U.S.C. §§ 1983 and 1988; 28 U.S.C. §§ 1331 and 1343(3) and (4); as well as under the fifth and fourteenth amendments to the United States Constitution. The amount in controversy exceeds $10,000 exclusive of interests and costs. The plaintiffs seek a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202, and injunctive relief from an alleged infringement of their rights under the Equal Protection Clause of the fourteenth amendment and the aforementioned statutory provisions.

The complaint is drawn in two separate counts.[6] The second count of the complaint, the only count with which the Court is concerned at the present time, challenges the proposed consolidation of the Capitol Regional Planning Agency (hereinafter the CRPA) with the Capitol Regional Counsel of Governments (hereinafter the CRCOG) as authorized by 1971 Public Act 821. Several of the individually-named defendant elected town officials have moved to dismiss the complaint for failure to state a claim upon which relief can be granted. The Court, having reviewed the various memoranda, affidavits,

and briefs filed in connection herewith, and having heard counsels' oral arguments, finds that the defendants' motions to dismiss the second count of the complaint should be granted.

I.

Public Act 821 authorizes a restructuring of the existing CRPA and CRCOG by providing that new regional councils of governments may be created by the adoption of Public Act 821 by the consent of the legislative bodies of at least sixty percent of the towns within a given planning region.[1] According to that Act, each member town of the new CRCOG would be entitled to one representative on the council, who would be the chief elected official of that town.[2] The newly formed CRCOG would succeed to all the statutory powers and duties of the existing CRPA and CRCOG, with the existing CRPA losing its independence and becoming a subdivision of the new CRCOG.[3]

The City of Hartford, one of the twenty-nine towns in the Capitol Region Planning Area and a member of the existing Capitol Region Council of Governments, alleged represents the following percentage of the statistical bases of the CRPA and CRCOG:

	CRPA	CRCOG
1. Total population	23.7%	25.9%
2. Black population	86.8%	80.8%
3. Public school population	19.1%	21.0%

	CRPA	CRCOG
4. Minority (Black and Spanish surname) population	84.3%	86.0%
5. Low and moderate public housing	72.9%	73.7%
6. Minority residents in public housing	99.2%	99.2%
7. Grand list value	23.1%	25.8%
8. Retail sales	27.4%	29.8%
9. Taxable motor vehicles	16.5%	18.2%
10. Dwelling units	28.8%	31.0%
11. Total employment	40.9%	44.0%
12 Manufacturing employment	20.1%	22.4%

At the present time, the City of Hartford has five representatives on the 66 member policy making delegation of the existing CRPA (approximately 8% of the representation on that body). Two of Hartford's representatives are Black, one is Puerto Rican. The thrust of the plaintiffs' argument is that a restructuring of the CRCOG and CRPA in accordance with Public Act 821 would result in a gross under-representation of the City of Hartford, since representation on the new CRCOG would make no adjustment for population variations among member towns. Thus, the City of Hartford with a population of approximately 160,000 persons, or nearly 24% of the Regional population, would have only one representative on the new CRCOG, the same as, for example, the Town of Andover whose population is approximately 2000 persons. Moreover, by diluting Hartford's representation on the CRCOG, there would be a consequent dilution of the representation of low income and minority groups which are centered in that city.

The plaintiff Education/Instruccion complains that it

will be irreparably harmed by a restructuring of the CRPA and CRCOG, in that such a restructuring would result in the under-representation of the low income and minority groups which it purportedly represents. The plaintiffs Ramos and Hinds complain that their votes will be unconstitutionally diluted when they participate in the election of the "chief elected official" of the City of Hartford, who will then automatically become their representative on the new CRCOG by virtue of his office. The plaintiff Dixon joins with the plaintiff Ramos in complaining that a restructuring of the CRCOG would result in the improper representation of the respective minority groups of which they are members. Accordingly, the plaintiffs seek a declaratory judgment that Public Act 821 violates the Equal Protection Clause of the United States Constitution as it applies to the Capitol Region, and injunctive relief prohibiting the defendant Towns from ratifying that Act. 10/

II.

The issue before the Court at this time is not whether federal statutes or regulations of the United States Department of Housing and Urban Development demand fair representation of minority groups on policy making bodies which control

or significantly affect the disposition of federal monies. The sole issue is whether the fourteenth amendment to the United States Constitution requires that the proposed regional council of governments authorized under Connecticut General Statute § 4-124j be apportioned on a "one man-one vote" basis. This Court holds that it does not.

Reduced to its simplest form, the plaintiffs' argument is that the proposed regional council of governments for the Capitol Region creatable under Connecticut General Statute § 4-124j would be an "elective body" under the rationale of Bianchi v. Griffing, 393 F.2d 457 (2d Cir. 1968); charged with the performance of governmental functions within the meaning of Avery v. Midland County, 390 U.S. 474 (1968) and Hadley v. Junior College District, 397 U.S. 50 (1970); and therefore subject to the "one man-one vote" requirement set forth in Wesberry v. Sanders, 376 U.S. 1 (1964) and Reynolds v. Sims, 377 U.S. 533 (1964). The Court finds this argument to be without merit.

In Bianchi v. Griffing, supra, the Court of Appeals faced the issue of whether the one man-one vote requirement was applicable to a County Board of Supervisors which possessed "general governmental powers" and was "representative of most of the general governing bodies of American cities . . . ," but whose membership consisted of "delegates" from each of the ten towns in the county who had previously been elected "Town Supervisors" in locally held popular elections.

Id. at 460-461. Emphasizing that the County Board was in reality a local government, the Court held that "the mandate of the equal protection clause cannot be effectively circumscribed by a local legislative body with general governmental powers . . . simply by labeling [its] members 'delegates.'" Id. at 461.

While dictum in Bianchi lends some support to the plaintiffs' argument that a citizen entering the voting booth to choose the chief elected official of his municipality would at the same time be selecting that municipality's "delegate" to the CRCOG, thus making that proposed body elective in the practical sense, two recent United States Supreme Court decisions, Salyer Land Co. v. Tulare Lake Basin Water Storage District, 41 U.S.L.W. 4350 (March 20, 1973) and Associated Enterprises Inc. v. Toltec Watershed Improvement District, 41 U.S.L.W. 4397 (March 20, 1973), indicate that applicability of the one man-one vote principle does not necessarily follow from a determination that a particular body is constituted through an elective, rather than an appointive, process. Cf. People ex rel. Younger v. County of Eldorado, 487 P.2d 1193, 1209 (Calif. 1971). It is therefore unnecessary to consider the defendants' argument that Bianchi was superseded by Hadley v. Junior College District, supra, and that the members of the CRCOG, like those serving on the Board in Sailors v. Board of Education, 397 U.S. 105 (1967) would be appointive.

[1] Connecticut General Statute § 4-124j provides that

the CRCOG would be voluntary and that a participating municipality could withdraw at any time. To this extent it is similar to the Junior College District considered in Hadley. However, the CRCOG is distinguishable from the District considered in Hadley and the Board of County Commissioners to which the "one man-one vote" principle was held applicable in Avery v. Midland County, supra, in at least one crucial and controlling respect, for in each of those cases, a local unit of government exercised general governmental powers and performed vital governmental functions.

The Board of Commissioners in Avery established and maintained a county jail, made contracts, built roads and bridges, administered the county's welfare system, performed duties in connection with elections, set tax rates, issued bonds, adopted the county's budget, built and ran hospitals, airports, and libraries, established a housing authority, fixed school district boundaries, and determined election districts. Avery, supra, 390 U.S. at 476-477. While the powers and functions of the College District considered in Hadley were not "fully as broad" as those of the Midland County Commissioners, they were nevertheless sufficiently general and important to fall within the Avery decision. They included the power to issue bonds, levy and collect taxes, pass on petitions to annex school districts, and to acquire private property through condemnation. Hadley, supra,

397 U.S. at 53.

By contrast, the powers and functions of the proposed CRCOG are merely to be informed, to advise, comment, and propose. As the successor to the responsibilities and duties of the existing planning agency and council of elected officials,[11] its functions would include the rendering of "advisory reports," recommendations, and development plans concerning grants-in-aid of municipal programs;[12] the studying of proposed zone changes within five hundred feet of the boundary of another municipality, and the issuance of a "purely advisory" impact report;[13] the formulation of development plans and recommendations for the general use of land as "in the opinion of the agency" would be beneficial to the area, and the providing of technical assistance to municipalities within the region;[14] the preparation of "advisory reports" on the regional significance of proposed agreements and compacts between member municipalities;[15] and the issuance of reports on the compatability between regional planning goals and proposed municipal development plans.[16] Such powers and functions are neither qualitatively nor quantitatively comparable to those considered by the Supreme Court in Hadley or Avery.

Moreover, the proposed CRCOG lacks even those few typical governmental powers which the Court in Salyer Land Company v. Tulare Lake Basin Water Storage District, 41 U.S.

L.W. at 4393 n.7, found to be insufficient to constitute "general governmental powers." And like the Tulare Lake District, the CRCOG would provide no

> "general public services such as schools, housing, transportation, utilities, roads or anything else of the type ordinarily financed by a municipal body. . . . There are no . . . shops, hospitals or other facilities designed to improve the quality of life within [its] . . . boundaries and it does not have a fire department, police, buses, or trains." 41 U.S.L.W. at 4393.

Certainly, the maintainance of a Capitol Region Crime Squad, a voluntary association of the law enforcement agencies of the several constituent municipalities, whose function is to provide a source of common experience and expertise and to foster a spirit of cooperation in investigating regional crime problems, cannot be characterized as a traditional and vital governmental function.

To the extent that the CRCOG is able to provide a forum for an interchange of ideas and an atmosphere conducive to the development of solutions to regional problems which know no geographic boundaries, its importance should not be minimized. But this does not bar recognition of the fact that it would be essentially advisory and non-governmental in both purpose and function, and the type of body which need not be apportioned on a strict numerical basis. As such, the CRCOG represents the kind of flexible experimentation which the Supreme Court has consistently recognized as being both desirabl

and constitutionally permissible. Sailors, supra, 387 U.S. at 110-111; Hadley, supra, 397 U.S. at 59; Salyer Land Co. v. Tulare Lake Basin Water Storage District, supra.

Accordingly, the defendants' motions to dismiss the second count of the complaint should be granted, and it is

SO ORDERED.

Dated at Hartford, Connecticut, this 13th day of June, 1973.

T. Emmet Clarie
United States District Judge

FOOTNOTES

1/ The plaintiffs Ramos and Hinds are residents of the City of Hartford. The plaintiff Dixon is a resident of the Town of Windsor. The plaintiff Ramos is a Puerto Rican-American; the plaintiff Dixon is a Black-American; and the plaintiff Hinds is White.

2/ Connecticut General Statute § 8-31a provides:

"Within any planning region of the state as defined or redefined by the director of the office of state planning under the provisions of section 4-124b a regional planning agency may be created by the adoption of sections 8-31a to 8-37a, inclusive, by ordinance of the legislative bodies of two or more towns, cities or boroughs within such region, provided the total number of representatives of such towns, cities or boroughs shall equal sixty per cent or more of the total number of representatives possible of all the towns, cities or boroughs within such region computed as prescribed in this section. Any other town, city or borough within such region may join such regional planning agency by the adoption of said sections by ordinance of its legislative body. Each town, city or borough within such region, except as provided herein, shall be entitled to two representatives on such agency and shall be entitled to additional representation on such agency at the ratio of one representative for each fifty thousand of population or fraction thereof over and above a population of twenty-five thousand as determined by the last-completed federal census. Cities and boroughs with boundaries not coterminous with the boundaries of the town in which they are located, upon adoption of the provisions of said sections, may have one representative on such agency provided the population of the city or borough is greater than fifty per cent of the total population of the town as determined by the last-completed federal census, and the town, upon adoption of the provisions of said sections, may have one representative on such agency. If the total population of the town is greater than twenty-five thousand, the town may elect or appoint the extra representative or representatives as prescribed above, except that, for each fifty thousand population residing in the city or borough, the city or borough may have one additional representative. Noncoterminous cities or boroughs which do not contain fifty per cent or more of the total population

Footnotes - cont'd:

of the town in which they are located shall not adopt the provisions of said sections and shall not join such regional planning agency. Where a planning commission exists in a town, city or borough established under the provisions of the general statutes or any special act, at least one of the representatives from such town, city or borough to the regional planning agency shall be appointed by such planning commission. The other representative or representatives shall be elected or appointed in the manner provided by ordinance adopted by the legislative body of such town, city or borough."

3/ The "Capitol Region" is composed of twenty-nine towns: Andover, Avon, Bloomfield, Bolton, Canton, East Granby, East Hartford, East Windsor, Ellington, Enfield, Farmington, Glastonbury, Granby, Hartford, Hebron, Manchester, Marlborough, Newington, Rocky Hill, Simsbury, Somers, South Windsor, Suffield, Tolland, Vernon, West Hartford, Wethersfield, Windsor, and Windsor Locks.

4/ Connecticut General Statute § 4-124c provides:

"Within any planning region of the state as defined or redefined by the director of the office of state planning under the provisions of section 4-124b, a regional council of elected officials may be created by ordinance of the legislative bodies of two or more towns, cities or boroughs within such region. Any other towns, cities or boroughs within such region may join such council by similar action. The representative to the council from each member town, city or borough shall be elected chief executive of the member town, city or borough or, if such member town, city or borough does not have an elected chief executive, a member of its legislative body chosen by such body to be such representative. Any town, city or borough which has become a member of the council may withdraw upon adoption of an ordinance by its legislative body."

5/ The following twenty-nine individuals are sued in their official capacity as the "Chief elected official" of their respective Towns: George Athanson (Hartford); Robert E. Post (Andover); Edward J. Doyle (Avon); Edward J. Stockton (Bloomfield); Richard Morra (Bolton); Raynard E. Ber-

Footnotes - cont'd:

geron (Canton); William S. Mayer (East Granby); Richard Blackstone (East Hartford); John L. Daley, Jr. (East Windsor); Francis J. Prichard, Jr. (Ellington); Frank Mancuso (Enfield); Jeremiah Wadsworth (Farmington); William S. Rogers (Glastonbury); Otto C. Neumann (Granby); John W. Thompson (Manchester); Peter Crawford (Marlborough); David Moser, M.D., (Rocky Hill); Russell S. Shaw (Simsbury); Abraham Glassman (South Windsor); Daniel F. Sullivan (Suffield); Erwin P. Stoetzner (Tolland); Frank J. McCoy (Vernon); Ellsworth Grant (West Hartford); Welles V. Adams (Wethersfield); Edward A. Savino (Windsor Locks); Elmer A. Mortensen (Newington); Leonard H. Owens (Somers); Robert Geisel (Windsor); and Aaron Rain (Hebron).

The defendants Welles V. Adams of Wethersfield and Elmer A. Mortensen of Newington have filed motions to dismiss and for summary judgment as to themselves individually and as the chief elected officials of their respective towns, alleging in substance that they are merely ceremonial officers who have only a single vote in their town councils. The defendant Mortensen's affidavit further represents that the Town of Newington is not a member of the Capitol Region Council of Governments and that he is not a representative on the Capitol Region Planning Agency. The Court is of the view that its ruling on the motions of the defendant Daniel F. Sullivan, and those defendants who joined and adopted his oral argument at the motion hearings, renders moot the Adams and Mortensen Motions.

6/ The first count of the complaint alleges that the Capitol Region Planning Agency (CRPA) has consistently failed to comply with federal statutes and administrative regulations which require it to provide for low income and minority group representation in regional planning processes, to adopt and enforce an affirmative program for equal employment and open housing, and to consider the problems of minority groups in its evaluations of, and recommendations on, federally funded planning projects. The first count of the complaint also alleges that, despite the CRPA's non-compliance with federal statutes and Department of Housing and Urban Development regulations and guidelines, the defendants Thompson and Romney failed to withdraw certification of the CRPA as the regional Area Planning Office (A.P.O.), the agency through which federal grants are disseminated, and have continued to permit it to receive federal planning grants.

In response to the allegations contained within count one, an investigation was conducted by the Department of Housing and Urban Development. The "Final Investigation Report," which has been filed with this Court, concludes that

Footnotes - cont'd:

there is support for the plaintiffs' allegations that the CRPA failed to comply with federal equal opportunity guidelines, the Civil Rights Acts of 1964 and 1968, and Department of Housing and Urban Development regulations with respect to citizen involvement. The report also concludes that the Hartford Area Office of the Department of Housing and Urban Development, by failing to apply sanctions for CRPA's non-compliance with federal statutes and regulations designed to ensure equality of participation and involvement, "acted in a way which condoned the exclusion of minorities from the CRPA Planning program."

As a result of that investigation, Department of Housing and Urban Development has withdrawn certification of the CRPA as the Area Planning Office and rescinded its federal funding "in order to implement Departmental policy with respect to the Equal Opportunity requirements of the Comprehensive Planning Assistance Program, and the provisions of Title VI and Title VIII of the pertinent Civil Rights Acts."

1/ Connecticut General Statute § 4-124j provides:

"Within any planning region of the state a regional council of governments may be created by the adoption of sections 4-124i to 4-124p, inclusive, by ordinance of the legislative bodies of not less than sixty per cent of all towns, cities and boroughs within such planning region entitled to membership on such council as hereinafter provided. Where any regional council of elected officials, or a regional planning agency, exist within a planning region, a regional council of governments may be created either as hereinabove provided, or by the adoption of said sections by resolution of any such regional council or councils of elected officials and any such regional planning agency, and the ratification of any such resolution by ordinance of the legislative bodies of not less than sixty per cent of all such towns, cities and boroughs. All towns, cities and boroughs within a planning region shall be entitled to membership in such council, including any city or borough with boundaries not coterminous with the boundaries of the town in which it is located. Any nonmember town, city or borough entitled to membership may join the council by the adoption of said sections by ordinance of its legislative body. Any member town, city or borough may withdraw from the council by adoption of an appropriate ordinance of its legislative body to become effective on the date of such adoption; provided, however, that any such withdrawing member shall be obligated to pay its pro rata

share of expenses of operation and pro rata share of funds committed by the council to active programs as of such date of withdrawal."

8/ Connecticut General Statute § 4-124k provides:

"Each member of a regional council of governments shall be entitled to one representative on the council who shall be the chief elected official of such member, or in the absence of any such chief elected official, an elected official appointed in the manner provided by ordinance of the legislative body of such member. Each representative of a member shall be entitled to one vote in the affairs of such council."

9/ Connecticut General Statute § 4-124 l provides:

"(c) Upon the expiration of the transitional period provided for under subsection (b) of this section, the regional council of governments shall succeed to and be responsible for all of the rights, privileges, and obligations, whether statutory or contractual, of any regional council of elected officials, or regional planning agency, or both, within the planning region, and no regional council of elected officials, nor planning agency shall be subsequently created within such planning region, excepted as provided in subsection (d) of this section."

10/ To date at least three towns within the Capitol Region have ratified Public Act 821. They are the Towns of Wethersfield (April 3, 1972); Farmington (May 16, 1972); and Glastonbury (February 28, 1972).

11/ Conn. Gen. Stat. §§ 4-124d and m.

12/ Conn. Gen. Stat. §§ 7-131 d and e.

13/ Conn. Gen. Stat. § 8-3b. Also see § 8-26b.

14/ Conn. Gen. Stat. § 8-35a.

15/ Conn. Gen. Stat. § 8-35d.

16/ Conn. Gen. Stat. § 8-191. Also see § 8-207.